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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 24, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CATINA G.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI,  
ACTING COMMISSIONER OF  
SOCIAL SECURITY,<sup>2</sup>

Defendant.

No. 1:21-CV-03027-ACE

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND REMANDING FOR  
ADDITIONAL PROCEEDINGS

**ECF Nos. 16, 18**

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 16, 18. Attorney Kathryn Higgs represents Catina G. (Plaintiff); Special Assistant United States Attorney Ryan Lu represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion for Summary Judgment;

<sup>1</sup>To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names.

<sup>2</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter  
 2 to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

3 **JURISDICTION**

4 Plaintiff protectively filed an application for Disability Insurance Benefits  
 5 and Supplemental Security Income on October 4, 2018, alleging disability since  
 6 April 16, 2018. Tr. 15, 68, 231-46. The applications were denied initially and  
 7 upon reconsideration. Tr. 128-31, 136-49. Administrative Law Judge (ALJ)  
 8 Virginia M. Robinson held a hearing on September 17, 2020, Tr. 33-67, and issued  
 9 an unfavorable decision on October 26, 2020. Tr. 12-32. Plaintiff requested  
 10 review by the Appeals Council and the Appeals Council denied the request for  
 11 review on January 15, 2021. Tr. 1-6. The ALJ's October 26, 2020 decision  
 12 became the final decision of the Commissioner, which is appealable to the district  
 13 court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review  
 14 on February 23, 2021. ECF No. 1.

15 **STANDARD OF REVIEW**

16 The ALJ is tasked with "determining credibility, resolving conflicts in  
 17 medical testimony, and resolving ambiguities." *Andrews v. Shalala*, 53 F.3d 1035,  
 18 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
 19 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
 20 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
 21 only if it is not supported by substantial evidence or if it is based on legal error.  
 22 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
 23 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
 24 1098. Put another way, substantial evidence is such relevant evidence as a  
 25 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
 26 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305  
 27 U.S. 197, 229 (1938)). If the evidence is susceptible to more than one rational  
 28 interpretation, the Court may not substitute its judgment for that of the ALJ.

1 *Tackett*, 180 F.3d at 1098; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595,  
2 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or  
3 if conflicting evidence supports a finding of either disability or non-disability, the  
4 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230  
5 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be  
6 set aside if the proper legal standards were not applied in weighing the evidence  
7 and making the decision. *Brawner v. Sec'y of Health and Human Servs.*, 839 F.2d  
8 432, 433 (9th Cir. 1988).

## 9 **SEQUENTIAL EVALUATION PROCESS**

10 The Commissioner has established a five-step sequential evaluation process  
11 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a),  
12 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through  
13 four the claimant bears the burden of establishing a *prima facie* case of disability.  
14 *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes  
15 that a physical or mental impairment prevents the claimant from engaging in past  
16 relevant work. 20 C.F.R. § 404.1520(a)(4), 416.920(a)(4). If a claimant cannot  
17 perform past relevant work, the ALJ proceeds to step five, and the burden shifts to  
18 the Commissioner to show (1) that Plaintiff can perform other substantial gainful  
19 activity and (2) that a significant number of jobs exist in the national economy  
20 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir.  
21 1984); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If a claimant cannot  
22 make an adjustment to other work in the national economy, the claimant will be  
23 found disabled. 20 C.F.R. § 404.1520(a)(4)(v), 416.920(a)(4)(v).

## 24 **ADMINISTRATIVE FINDINGS**

25 On October 26, 2020 the ALJ issued a decision finding Plaintiff was not  
26 disabled as defined in the Social Security Act. Tr. 12-32.

1 At step one, the ALJ found Plaintiff, who meets the insured status  
2 requirements of the Social Security Act through December 31, 2023, had not  
3 engaged in substantial gainful activity since her alleged onset date. Tr. 17.

4 At step two, the ALJ determined Plaintiff had the following severe  
5 impairments: depression, anxiety, impingement syndrome of the right shoulder,  
6 plantar fasciitis and plantar spur, mild bilateral knee degenerative joint disease,  
7 status-post repair of bilateral shoulder rotator cuff tears, asthma, and obesity. *Id.*

8 At step three, the ALJ found Plaintiff did not have an impairment or  
9 combination of impairments that met or medically equaled the severity of one of  
10 the listed impairments. Tr. 18.

11 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
12 she could perform light work, with the following limitations:

13 [Plaintiff] can lift and/or carry up to 20 pounds occasionally and up to  
14 10 pounds frequently. She can stand and/or walk approximately 4  
15 hours and can sit for approximately 8 hours per workday with normal  
16 breaks. She can never climb ladders, ropes, or scaffolds. She can  
17 frequently balance and stoop. She can occasionally kneel, crouch, and  
18 crawl. Right overhead reaching is limited to 10 pounds occasionally.  
19 She should avoid concentrated exposure to extreme cold, excessive  
20 vibration, and workplace hazards such as working with dangerous  
machinery and work at unprotected heights. She is limited to simple,  
routine tasks in a routine work environment with simple, work-related  
decisions.

21  
22 Tr. 19-20.

23 At step four, the ALJ found Plaintiff was unable to perform past relevant  
24 work. Tr. 24.

25 At step five, the ALJ found that, based on the testimony of the vocational  
26 expert, and considering Plaintiff's age, education, work experience, and RFC,  
27 Plaintiff could perform jobs that existed in significant numbers in the national  
28

1 economy, including the jobs of: storage facility rental clerk, office helper, and  
2 survey worker. Tr. 25.

3 The ALJ thus concluded Plaintiff was not under a disability within the  
4 meaning of the Social Security Act at any time from at any time from the alleged  
5 onset date through the date of the decision. Tr. 26-27.

## 6 ISSUES

7 Plaintiff seeks judicial review of the Commissioner's final decision denying  
8 her disability insurance benefits under Title II and Title XVI of the Social Security  
9 Act. The question presented is whether substantial evidence supports the ALJ's  
10 decision denying benefits and, if so, whether that decision is based on proper legal  
11 standards. Plaintiff raises the following issues for review (1) whether the ALJ  
12 properly evaluated the medical opinion evidence; (2) whether the ALJ properly  
13 evaluated Plaintiff's symptom complaints; and (3) whether the ALJ conducted a  
14 proper step-five analysis. ECF No. 16 at 4.

## 15 DISCUSSION

### 16 A. Medical Opinions

17 Plaintiff contends the ALJ erred in evaluating the medical opinion evidence.  
18 ECF No. 16 at 11-16.

19 For claims filed on or after March 27, 2017, new regulations apply that  
20 change the framework for how an ALJ must evaluate medical opinion evidence.  
21 *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL  
22 168819, 82 Fed. Reg. 5844-01, (Jan. 18, 2017); 20 C.F.R. §§ 404.1520c, 416.920c.  
23 The new regulations provide the ALJ will no longer give any specific evidentiary  
24 weight to medical opinions or prior administrative medical findings. *Revisions to*  
25 *Rules*, 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68; *see* 20 C.F.R. §§  
26 404.1520c(a), 416.920c(a). Instead, the ALJ must consider and evaluate the  
27 persuasiveness of all medical opinions or prior administrative medical findings  
28

1 from medical sources. 20 C.F.R. §§ 404.1520c(a) and (b), 416.920c(a) and (b).  
2 The factors for evaluating the persuasiveness of medical opinions and prior  
3 administrative findings include supportability, consistency, the source's  
4 relationship with the claimant, any specialization of the source, and other factors  
5 (such as the source's familiarity with other evidence in the file or an understanding  
6 of Social Security's disability program). 20 C.F.R. §§ 404.1520c(c)(1)-(5),  
7 416.920c(c)(1)-(5).

8 Supportability and consistency are the most important factors, and the ALJ  
9 must explain how both factors were considered. 20 C.F.R. §§ 404.1520c(b)(2),  
10 416.920c(b)(2). The ALJ may explain how the ALJ considered the other factors,  
11 but is not required to do so, except in cases where two or more opinions are equally  
12 well-supported and consistent with the record. *Id.* Supportability and consistency  
13 are explained in the regulations:

14  
15 (1) *Supportability.* The more relevant the objective medical evidence  
16 and supporting explanations presented by a medical source are to  
17 support his or her medical opinion(s) or prior administrative medical  
18 finding(s), the more persuasive the medical opinions or prior  
19 administrative medical finding(s) will be.

20 (2) *Consistency.* The more consistent a medical opinion(s) or prior  
21 administrative medical finding(s) is with the evidence from other  
22 medical sources and nonmedical sources in the claim, the more  
23 persuasive the medical opinion(s) or prior administrative medical  
finding(s) will be.

24 20 C.F.R. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2).

25 The Ninth Circuit recently addressed the issue of whether the new regulatory  
26 framework displaces the longstanding case law requiring an ALJ to provide  
27 specific and legitimate reasons to reject an examining provider's opinion. *Woods*  
28 *v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the new

1 regulations eliminate any hierarchy of medical opinions, and the specific and  
2 legitimate standard no longer applies. *Id.* at 788-89, 792. The Court reasoned the  
3 “relationship factors” remain relevant under the new regulations, and thus the ALJ  
4 can still consider the length and purpose of the treatment relationship, the  
5 frequency of examinations, the kinds and extent of examinations that the medical  
6 source has performed or ordered from specialists, and whether the medical source  
7 has examined the claimant or merely reviewed the claimant’s records. *Id.* at 790,  
8 792. Even under the new regulations, an ALJ must provide an explanation  
9 supported by substantial evidence when rejecting an examining or treating doctor’s  
10 opinion as unsupported or inconsistent. *Id.* at 792.

11           *Dr. Fitterer and Dr. Staley*

12           On December 26, 2018, the state agency medical consultant, Norman Staley,  
13 MD, reviewed Plaintiff’s records and provided an opinion on her level of  
14 functioning. Tr. 75-78. Dr. Staley opined Plaintiff could occasionally lift and  
15 carry 20 pounds and frequently lift and carry ten pounds; she was able to stand and  
16 walk for a total of 4 hours in an eight-hour day, and sit for about six hours in an  
17 eight-hour day; she could occasionally climb ramps and stairs but should never  
18 climb ladders, ropes, or scaffolds; she could occasionally balance and frequently  
19 stoop, kneel, crouch and crawl; she was limited to occasional overhead reaching on  
20 the right; and she should avoid concentrated exposure to extreme cold and  
21 vibrations and hazards. *Id.*

22           On April 6, 2019 the state agency medical consultant, JD Fitterer, MD,  
23 affirmed Dr. Stanley’s opinion, except Dr. Fitterer opined she was restricted to  
24 frequent balancing and frequent overhead reaching on the right. Tr. 105-08. The  
25 ALJ found the opinions of Dr. Fitterer and Dr. Stanley persuasive but adopted Dr.  
26 Staley’s more restrictive limitation to occasional overhead reaching on the right.  
27 Tr. 23.

1       The ALJ found the state agency medical opinions were generally supported  
2 by physical exam findings. Tr. 23. Supportability is one of the most important  
3 factors an ALJ must consider when determining how persuasive a medical opinion  
4 is. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). The more relevant objective  
5 evidence and supporting explanations that support a medical opinion, the more  
6 persuasive the medical opinion is. 20 C.F.R. §§ 404.1520c(c)(1), 416.920c(c)(1).  
7 Here, the ALJ found the state agency opinions were “generally supported by the  
8 physical exam findings showing [Plaintiff] to have some reduced range of motion  
9 on her shoulders and knees but improved strength, gait, and range of motion with  
10 treatment.” Tr. 23. The ALJ does not cite evidence to support her conclusion the  
11 state agency opinions were supported by physical exam findings, but the ALJ  
12 provided a summary of the medical evidence earlier in the decision. *See* Tr. 21-23.

13       In the summary of medical evidence, the ALJ noted that Plaintiff also began  
14 reporting left shoulder issues, without specifying when this occurred, and that an  
15 MRI in March 2019 showed a rotator cuff tear on the left and Plaintiff underwent  
16 left shoulder rotator cuff repair in May 2019. Tr. 21 (citing Tr. 487, 489); *see* Tr.  
17 545-46. Review of the medical records shows that Plaintiff was reporting left  
18 shoulder pain by December 2018, with physical exam findings including decreased  
19 range of motion and decreased strength on the left; and that her primary care  
20 provider noted rotator cuff injury on the left was suspected at that time. Tr. 416-  
21 18. By February 2019 her orthopedic surgeon, Dr. Griffiths, noted objective  
22 findings including tenderness and reduced strength and range of motion on the left,  
23 and reported that “she is quite limited and [with] painful motion globally about the  
24 left shoulder with positive impingement signs with pronounced pain and weakness  
25 with isolated supraspinatus testing at the left shoulder.” Tr. 432-44. Dr. Griffiths  
26 explained left shoulder x-ray at that time showed no traumatic or degenerative  
27 changes but ordered an MRI due to “history and exam suggestive of significant  
28 rotator cuff tear at her left shoulder.” Tr. 435. Based on the MRI findings, as

1 noted by the ALJ, Plaintiff then underwent left side rotator cuff repair in May  
2 2019. Tr. 23.

3       The state agency reviewer, Dr. Fitterer, provided his reconsideration opinion  
4 in April 2019. Tr. 105-08. There is no evidence in the reconsideration decision  
5 that Dr. Fetterer was aware of the results of the March 22, 2019 MRI, and the state  
6 agency medical reviewers only gave Plaintiff limitations for her established  
7 impairments; the ALJ, however, noted the progression of her left shoulder  
8 impairment throughout the period at issue in the decision, including objective  
9 findings including decreased range of motion, evidence of a tear on MRI, and  
10 resultant left shoulder surgery in May 2019. Tr. 21-22. While the ALJ adopted the  
11 state agency opinion, with the limitations for her established right shoulder  
12 impairment as of the reconsideration determination, the ALJ failed to include  
13 similar or any limitations for her left shoulder impairment, despite finding a severe  
14 bilateral shoulder impairment.

15       The ALJ also concluded that Plaintiff's impairments including her shoulders  
16 improved with treatment. Tr. 22-23. The ALJ noted, for example, that "during an  
17 appointment in early 2020, [Plaintiff] reported ongoing left shoulder pain but noted  
18 that she was 'doing very well' with regard to her left shoulder." Tr. 22 (citing Tr.  
19 577). This is a misstatement of the record, however, as the evidence shows she  
20 reported she was 'doing very well' with regard to her *right* shoulder at that time  
21 but endorsed ongoing left shoulder pain. Tr. 577. In fact, the ALJ is citing a visit  
22 to review updated MRI findings in 2020, which showed a new or persistent tear of  
23 the left shoulder. Tr. 577-79.

24       The state agency physical medical opinions are from December 2018 and  
25 April 2019 and did not take her left shoulder impairment into consideration, as  
26 there was limited objective evidence of this impairment at that time; the state  
27 agency reviewers did give her limitations for the same impairment on the right  
28 side, however, explaining exertional, postural and overhead reaching limitations on

1 the right side were needed due to Plaintiff's "right shoulder limitations in [range of  
2 motion]." *See* Tr. 107. Plaintiff points out, however, that records after that time,  
3 including from her orthopedic surgeon, show objective findings of left shoulder  
4 limitation including reduced range of motion despite May 2019 left shoulder  
5 surgery; and she was a candidate for additional shoulder repair at the time of the  
6 2020 hearing due to incomplete healing, persistent tear, or retear of her left rotator  
7 cuff. ECF No. 16 at 14; *see* 573-75. The ALJ failed to address relevant evidence  
8 after the state agency review in assessing the state agency physical opinions under  
9 the factors required by the regulations. The ALJ's finding that the state agency  
10 physical opinions were persuasive because they are supported by the physical  
11 exam findings showing Plaintiff to have some limitation in her shoulders and  
12 knees, but improved strength, gait, and range of motion with treatment is therefore  
13 not supported by substantial evidence for the entire period at issue.

14 The ALJ also found the opinions of Dr. Stanley and Dr. Fitterer were  
15 "consistent with [Plaintiff's] statements throughout the record regarding her  
16 functioning." Tr. 24. The ALJ must consider the factor of consistency when  
17 determining how persuasive a medical opinion is. 20 C.F.R. §§ 404.1520c(b)(2),  
18 416.920c(b)(2). The more consistent an opinion is with the evidence from other  
19 sources, the more persuasive the opinion is. 20 C.F.R. §§ 404.1520c(c)(2),  
20 416.920c(c)(2). However, the ALJ must consider all the relevant evidence in the  
21 record and may not point to only those portions of the records that bolster his  
22 findings. *See, e.g., Holohan v. Massanari*, 246 F.3d 1195, 1207-08 (9th Cir. 2001)  
23 (holding that an ALJ cannot selectively rely on some entries in plaintiff's records  
24 while ignoring others).

25 As discussed *supra*, The ALJ erred in misstating Plaintiff's reports of  
26 improved functioning on the left in 2020. Additionally, the ALJ did not discuss  
27 relevant findings from multiple treating providers after the state agency review,  
28 including her orthopedic specialist's report of objective findings such as persistent

1 reduced left shoulder range of motion and decreased strength upon exam, which  
2 are more consistent with Plaintiff's reports of functioning. *See, e.g.*, 416-418, 432-  
3 44, 575, 577. In selectively citing evidence that tended to support her conclusions,  
4 when the record showed more mixed findings, the ALJ's conclusion that the state  
5 agency opinions were persuasive because they were consistent with [Plaintiff's]  
6 statements throughout the record regarding her functioning is also not supported by  
7 substantial evidence.

8 Further, the state agency opinions are the only medical opinions in the  
9 record, and the reviewers failed to consider or were not aware of her left shoulder  
10 impairment at the time of review. The ALJ, however, had the opportunity to  
11 review the record as a whole, including newer evidence of failed surgical repair  
12 and/or re-tear of the left rotator cuff; and despite finding severe impairments  
13 including "status-post repair of bilateral shoulder rotator cuff tears," Tr. 17, the  
14 ALJ failed to provide any left side limitations or seek additional medical opinion  
15 evidence to better determine Plaintiff's limitations from all her impairments.

16 Plaintiff also contends the ALJ erred in evaluating the state agency  
17 psychological consultants' opinions. ECF No. 16 at 15-16. As this case is  
18 remanded to reconsider the state agency physical opinions, the ALJ shall  
19 reconsider all prior administrative findings.

20 Upon remand, the ALJ is instructed to order physical and mental  
21 consultative examinations and to reconsider all medical opinions with the  
22 assistance of medical expert testimony. The ALJ is to reassess all medical  
23 opinions with the factors required by the regulations and to incorporate the  
24 limitations into the RFC or give reasons supported by substantial evidence to reject  
25 each opinion.

26 **B. Plaintiff's Symptom Claims**

27 Plaintiff contends the ALJ erred by improperly rejecting Plaintiff's symptom  
28 testimony. ECF No. 16 at 6-11.

1 It is the province of the ALJ to make determinations regarding a claimant's  
2 subjective statements. *Andrews*, 53 F.3d at 1039. However, the ALJ's findings  
3 must be supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229,  
4 1231 (9th Cir. 1990). Once the claimant produces medical evidence of an  
5 underlying medical impairment, the ALJ may not discredit testimony as to the  
6 severity of an impairment merely because it is unsupported by medical evidence.  
7 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence  
8 of malingering, the ALJ's reasons for rejecting the claimant's testimony must be  
9 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.  
10 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings are  
11 insufficient: rather the ALJ must identify what testimony is not credible and what  
12 evidence undermines the claimant's complaints." *Lester* at 834; *Dodrill v. Shalala*,  
13 12 F.3d 915, 918 (9th Cir. 1993).

14 The ALJ concluded Plaintiff's medically determinable impairments could  
15 reasonably be expected to cause the alleged symptoms; however, Plaintiff's  
16 statements concerning the intensity, persistence, and limiting effects of those  
17 symptoms were not fully consistent with the medical and other evidence. Tr. 20.

18 The ALJ found that Plaintiff's allegations were not consistent with the  
19 medical evidence and that Plaintiff improved with treatment. Tr. 21-23. An ALJ  
20 may not discredit a claimant's symptom testimony and deny benefits solely  
21 because the degree of the symptoms alleged is not supported by objective medical  
22 evidence. *Rollins v. Massanari*, 261 F.3d 853, 856-57 (9th Cir. 2001). However,  
23 the objective medical evidence is a relevant factor, along with the medical source's  
24 information about the claimant's pain or other symptoms, in determining the  
25 severity of a claimant's symptoms and their disabling effects. *Id.* at 857; 20 C.F.R.  
26 §§ 404.1529(c)(2), 416.929(c)(2). Additionally, a favorable response to treatment  
27 can undermine a claimant's complaints of debilitating symptoms. *Tommasetti v.*  
28 *Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008).

1       Here, as discussed *supra* in relation to the medical opinion evidence, the  
2 ALJ failed to adequately discuss relevant objective findings; the ALJ also  
3 misstated Plaintiff's statement regarding improvement of her left shoulder  
4 impairment, which resulted in an inaccurate characterization of the record during  
5 the period at issue. Again, objective evidence showed Plaintiff's left shoulder  
6 impairment, at least, had not improved; it had worsened by the time of the hearing,  
7 which is consistent with her symptom reports. The ALJ also cited evidence that  
8 supported Plaintiff's symptom complaints, including that she underwent "bilateral  
9 shoulder surgeries due to tears," and that repeat MRI in 2020 showed another tear  
10 in her left rotator cuff. Tr. 22-23. The ALJ's conclusion that the objective medical  
11 evidence was inconsistent with her symptom claims and that she improved with  
12 treatment are not supported by substantial evidence.

13       The ALJ also concluded that Plaintiff's activities were inconsistent with her  
14 allegations. Tr. 21-23. The ALJ may consider a claimant's activities that  
15 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a  
16 substantial part of the day engaged in pursuits involving the performance of  
17 exertional or non-exertional functions, the ALJ may find these activities  
18 inconsistent with the reported disabling symptoms. *Fair v. Bowen*, 885 F.2d 597,  
19 603 (9th Cir. 1989); *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012),  
20 *superseded on other grounds by* 20 C.F.R. §§ 404.1502(a), 416.902(a). "While a  
21 claimant need not vegetate in a dark room in order to be eligible for benefits, the  
22 ALJ may discount a claimant's symptom claims when the claimant reports  
23 participation in everyday activities indicating capacities that are transferable to a  
24 work setting" or when activities "contradict claims of a totally debilitating  
25 impairment." *Molina*, 674 F.3d at 1112-13.

26       Here, the ALJ found Plaintiff was able to perform cooking and cleaning and  
27 that she cared for several young children. Tr. 21-23. However, none of these  
28 activities are inconsistent with Plaintiff's allegations of chronic pain and other

1 symptoms preventing her from working a full-time job during the period at issue.  
2 The Ninth Circuit has repeatedly found that the ability to perform these kinds of  
3 activities is not inconsistent with the inability to work:

4 We have repeatedly warned that ALJs must be especially cautious in  
5 concluding that daily activities are inconsistent with testimony about  
6 pain, because impairments that would unquestionably preclude work  
7 and all the pressures of a workplace environment will often be  
8 consistent with doing more than merely resting in bed all day.

9 *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014).

10 Plaintiff testified that she was having health problems prior to her  
11 grandchildren coming to live with her, and that she left her prior workplace due to  
12 health concerns including difficulty walking. Tr. 40-41. She also testified she did  
13 not lift heavy things at home and that she dropped things, including dishes and her  
14 hairbrush, and that she had difficulty putting her shirt on over her head. Tr. 52. In  
15 her 2018 function report, Plaintiff reported she needed help with cooking and  
16 housework, including cutting meat or vegetables and lifting a laundry basket. Tr.  
17 268-71.

18 Further, while the ALJ found that Plaintiff was “able to engage in significant  
19 childcare duties during the period at issue,” and repeatedly noted the fact that she  
20 took in multiple grandchildren to discount her symptom claims, the ALJ provided  
21 no analysis or specific examples of caregiving activities except that her  
22 grandchildren lived with her during the period at issue. *See* Tr. 20-23. If  
23 caregiving activities are to serve as a basis for the ALJ to discredit Plaintiff’s  
24 symptom claims, the record must identify the nature, scope, and duration of the  
25 care involved and this care must be “hands on” rather than a “one-off” care  
26 activity. *Trevizo v. Berryhill*, 871 F.3d 664, 676-77 (9th Cir. 2017). Here, Plaintiff  
27 testified that two grandchildren lived with her at the time of the hearing, and her  
28 husband and seventeen-year-old daughter helped care for them. Tr. 57-58. The

1 ALJ provided limited analysis of Plaintiff's ADLs and did not detail Plaintiff's  
2 childcare activities. While care activities may rebut a claimant's symptoms claims,  
3 without any analysis of childcare activities the ALJ's conclusion that Plaintiff's  
4 activities were inconsistent with her symptom claims is not supported by  
5 substantial evidence.

6 Upon remand the ALJ is instructed to reevaluate Plaintiff's symptom claims  
7 in the context of the entire record.

8 **C. Step Five Analysis**

9 Plaintiff argues the ALJ erred in determining Plaintiff's RFC at step five and  
10 relying on the vocational expert's response to an incomplete hypothetical. ECF  
11 No. 16 at 16-19. Having determined a remand is necessary to readdress the  
12 medical source opinions and Plaintiff's subjective complaints, the Court declines to  
13 reach this issue. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012)  
14 ("Because we remand the case to the ALJ for the reasons stated, we decline to  
15 reach [plaintiff's] alternative ground for remand.").

16 Upon remand, the ALJ is instructed to perform the sequential analysis anew,  
17 including reconsidering the step-five analysis.

18 **CONCLUSION**

19 Plaintiff argues the decision should be reversed and remanded for the  
20 payment of benefits. ECF No. 16 at 19. The Court has the discretion to remand  
21 the case for additional evidence and findings or to award benefits. *Smolen*, 80 F.3d  
22 at 1292. The Court may award benefits if the record is fully developed and further  
23 administrative proceedings would serve no useful purpose. *Id.* Remand is  
24 appropriate when additional administrative proceedings could remedy defects.  
25 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court  
26 finds that further proceedings are necessary to resolve conflicts in the record, as  
27 well as to further develop the record.

The ALJ's decision is not supported by substantial evidence and not free of harmful error. On remand, the ALJ shall obtain physical and mental consultative examinations and obtain all updated medical evidence. The ALJ is instructed to reevaluate the medical evidence of record with the assistance of medical expert testimony, making findings on each of the five steps of the sequential evaluation process. The ALJ shall reassess all medical opinion evidence using the factors required by the regulations, and shall also reassess plaintiff's subjective complaints, taking into consideration any other evidence or testimony relevant to Plaintiff's disability claim.

**Accordingly, IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 16, is  
**GRANTED**

2. Defendant's Motion for Summary Judgment, ECF No. 18, is  
**DENIED**

3. The matter is **REMANDED** to the Commissioner for additional proceedings consistent with this Order.

4. An application for attorney fees may be filed by separate motion.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

DATED January 24, 2023.



Alexander C. Ekstrom

ALEXANDER C. EKSTROM

## UNITED STATES MAGISTRATE JUDGE